

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1322

Introduced by Senator Cedillo
(Coauthor: Senator Kuehl)

February 16, 2006

An act to amend Sections 65582, 65583, 65583.2, and 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as amended, Cedillo. Housing.

(1) The Planning and Zoning Law requires the housing element of the general plan of a city or county to include, among other things, a program with a 5-year schedule of actions that the local government is undertaking or intends to undertake to implement the goals and objectives of the housing element. The program is also required to provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including the development of farmworker housing for low- and very low income households.

This bill would in addition add emergency shelter, transitional housing, and residential service facilities to these provisions, as specified, and would revise the requirements by which a local government may identify sites suitable for the development of emergency shelters and residential service facilities under these provisions. By increasing the duties of local public officials, the bill would create a state-mandated local program.

The bill would *provide that the changes to these provisions only apply to the adoption or amendment of the housing element on or after*

January 1, 2007, and would also delete obsolete provisions relating to assisted housing developments.

(2) The Planning and Zoning Law requires that a local agency not disapprove a housing development project, including farmworker housing, for very low, low-, or moderate-income households or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.

This bill would add emergency shelters to these provisions and would revise the conditions upon which a disapproval or a conditional approval of an emergency shelter is based. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Homelessness is a statewide problem that affects many
- 4 cities and counties. There are an estimated 360,000 homeless
- 5 individuals and families in California. In some counties, like Los
- 6 Angeles, an estimated 254,000 men, women, and children
- 7 experience homelessness over the course of each year. Some of
- 8 the causes of homelessness are mental illness, substance abuse,
- 9 prison release, and lack of affordable housing.
- 10 (b) Because homelessness affects people of all races, gender,
- 11 age, and geographic location there is a growing need for every
- 12 city and county to plan for the location of adequate emergency

1 shelters and residential service providers. Many people
2 experiencing homelessness, primarily youth and single
3 individuals, need shelter but also have a need for residential
4 substance abuse and mental health services.

5 (c) The lack or shortage of emergency shelter and residential
6 service providers for homeless individuals and families in cities
7 and counties across the state leads to the concentration of
8 services in inner cities and poor communities, like skid row area
9 in downtown Los Angeles.

10 (d) In order to ensure access to services in every city and
11 county for homeless individuals and families, it is important that
12 cities and counties plan for these services to address the special
13 needs and circumstances of this threatened population.

14 (e) It is the responsibility of cities and counties to plan and
15 identify sites to locate residential service providers. Cities and
16 counties should include this as part of their planning process and
17 locate these services where most appropriate in their community.
18 The state should not dictate where these residential service
19 providers should be located.

20 (f) It is the responsibility of the Legislature to promote strong
21 communities and ensure that housing and residential services are
22 available in all communities.

23 SEC. 2. Section 65582 of the Government Code is amended
24 to read:

25 65582. As used in this article the following definitions apply:

26 (a) “Community,” “locality,” “local government,” or
27 “jurisdiction” means a city, city and county, or county.

28 (b) “Council of governments” means a single or multicounty
29 council created by a joint powers agreement pursuant to Chapter
30 5 (commencing with Section 6500) of Division 1 of Title 1.

31 (c) “Department” means the Department of Housing and
32 Community Development.

33 (d) “Emergency shelter” has the same meaning as defined in
34 Section 50801 of the Health and Safety Code.

35 (e) “Housing element” or “element” means the housing
36 element of the community’s general plan, as required pursuant to
37 this article and subdivision (c) of Section 65302.

38 (f) “Residential service facility” includes all of the following
39 that serve seven or more persons:

(1) A “community care facility,” “residential facility,” “social rehabilitation facility,” “community treatment facility,” “transitional shelter care facility,” and “transitional housing placement facility,” as those terms are defined in Section 1502 of the Health and Safety Code.

(2) A “residential care facility” as defined in Section 1568.01 of the Health and Safety Code.

(3) A “residential care facility for the elderly” as defined in Section 1569.2 of the Health and Safety Code.

(g) “Transitional housing” has the same meaning as defined in Section 50801 of the Health and Safety Code.

SEC. 3. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, residential service facilities, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality’s existing and projected housing needs for all income levels. These existing and projected needs shall include the locality’s share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for

1 redevelopment, and an analysis of the relationship of zoning and
2 public facilities and services to these sites.

3 (4) An analysis of potential and actual governmental
4 constraints upon the maintenance, improvement, or development
5 of housing for all income levels and for persons with disabilities
6 as identified in the analysis pursuant to paragraph (6), including
7 land use controls, building codes and their enforcement, site
8 improvements, fees and other exactions required of developers,
9 and local processing and permit procedures. The analysis shall
10 also demonstrate local efforts to remove governmental
11 constraints that hinder the locality from meeting its share of the
12 regional housing need in accordance with Section 65584 and
13 from meeting the need for housing for persons with disabilities
14 identified pursuant to paragraph (6).

15 (5) An analysis of potential and actual nongovernmental
16 constraints upon the maintenance, improvement, or development
17 of housing for all income levels, including the availability of
18 financing, the price of land, and the cost of construction.

19 (6) An analysis of any special housing needs, such as those of
20 the elderly, persons with disabilities, large families, farmworkers,
21 families with female heads of households, families and persons
22 in need of emergency shelter, transitional housing, and persons in
23 need of residential service facilities.

24 (7) An inventory of sites suitable for the development within
25 the planning period of emergency shelters and residential service
26 facilities that are zoned to permit the development of these
27 shelters or facilities as a use by right, as defined in subdivision (i)
28 of Section 65583.2. The sites shall be zoned with appropriate
29 development standards and served with appropriate infrastructure
30 to accommodate the community's need for emergency shelters
31 and residential service facilities identified pursuant to paragraph
32 (6).

33 (8) An analysis of opportunities for energy conservation with
34 respect to residential development.

35 (9) An analysis of existing assisted housing developments that
36 are eligible to change from low-income housing uses during the
37 next 10 years due to termination of subsidy contracts, mortgage
38 prepayment, or expiration of restrictions on use. "Assisted
39 housing developments," for the purpose of this section, shall
40 mean multifamily rental housing that receives governmental

1 assistance under federal programs listed in subdivision (a) of
2 Section 65863.10, state and local multifamily revenue bond
3 programs, local redevelopment programs, the federal Community
4 Development Block Grant Program, or local in-lieu fees.
5 “Assisted housing developments” shall also include multifamily
6 rental units that were developed pursuant to a local inclusionary
7 housing program or used to qualify for a density bonus pursuant
8 to Section 65916.

9 (A) The analysis shall include a listing of each development
10 by project name and address, the type of governmental assistance
11 received, the earliest possible date of change from low-income
12 use and the total number of elderly and nonelderly units that
13 could be lost from the locality’s low-income housing stock in
14 each year during the 10-year period. For purposes of state and
15 federally funded projects, the analysis required by this
16 subparagraph need only contain information available on a
17 statewide basis.

18 (B) The analysis shall estimate the total cost of producing new
19 rental housing that is comparable in size and rent levels, to
20 replace the units that could change from low-income use, and an
21 estimated cost of preserving the assisted housing developments.
22 This cost analysis for replacement housing may be done
23 aggregately for each five-year period and does not have to
24 contain a project-by-project cost estimate.

25 (C) The analysis shall identify public and private nonprofit
26 corporations known to the local government which have legal
27 and managerial capacity to acquire and manage these housing
28 developments.

29 (D) The analysis shall identify and consider the use of all
30 federal, state, and local financing and subsidy programs which
31 can be used to preserve, for lower income households, the
32 assisted housing developments, identified in this paragraph,
33 including, but not limited to, federal Community Development
34 Block Grant Program funds, tax increment funds received by a
35 redevelopment agency of the community, and administrative fees
36 received by a housing authority operating within the community.
37 In considering the use of these financing and subsidy programs,
38 the analysis shall identify the amounts of funds under each
39 available program which have not been legally obligated for

1 other purposes and which could be available for use in preserving
2 assisted housing developments.

3 (b) (1) A statement of the community's goals, quantified
4 objectives, and policies relative to the maintenance, preservation,
5 improvement, and development of housing.

6 (2) It is recognized that the total housing needs identified
7 pursuant to subdivision (a) may exceed available resources and
8 the community's ability to satisfy this need within the content of
9 the general plan requirements outlined in Article 5 (commencing
10 with Section 65300). Under these circumstances, the quantified
11 objectives need not be identical to the total housing needs. The
12 quantified objectives shall establish the maximum number of
13 housing units by income category that can be constructed,
14 rehabilitated, and conserved over a five-year time period.

15 (c) A program which sets forth a five-year schedule of actions
16 the local government is undertaking or intends to undertake to
17 implement the policies and achieve the goals and objectives of
18 the housing element through the administration of land use and
19 development controls, provision of regulatory concessions and
20 incentives, and the utilization of appropriate federal and state
21 financing and subsidy programs when available and the
22 utilization of moneys in a low- and moderate-income housing
23 fund of an agency if the locality has established a redevelopment
24 project area pursuant to the Community Redevelopment Law
25 (Division 24 (commencing with Section 33000) of the Health and
26 Safety Code). In order to make adequate provision for the
27 housing needs of all economic segments of the community, the
28 program shall do all of the following:

29 (1) Identify actions that will be taken to make sites available
30 during the planning period of the general plan with appropriate
31 zoning and development standards and with services and
32 facilities to accommodate that portion of the city's or county's
33 share of the regional housing need for each income level that
34 could not be accommodated on sites identified in the inventory
35 completed pursuant to paragraph (3) of subdivision (a) without
36 rezoning, and to comply with the requirements of Section
37 65584.09. Sites shall be identified as needed to facilitate and
38 encourage the development of a variety of types of housing for
39 all income levels, including multifamily rental housing,
40 factory-built housing, mobilehomes, housing for agricultural

1 employees, emergency shelters, residential service facilities, and
2 transitional housing.

3 (A) Where the inventory of sites, pursuant to paragraph (3) of
4 subdivision (a), does not identify adequate sites to accommodate
5 the need for groups of all household income levels pursuant to
6 Section 65584, the program shall identify sites that can be
7 developed for housing within the planning period pursuant to
8 subdivision (h) of Section 65583.2.

9 (B) Where the inventory of sites pursuant to paragraph (3) of
10 subdivision (a) does not identify adequate sites to accommodate
11 the need for farmworker housing, the program shall provide for
12 sufficient sites to meet the need with zoning that permits
13 farmworker housing use by right, including density and
14 development standards that could accommodate and facilitate the
15 feasibility of the development of farmworker housing for low-
16 and very low income households.

17 (C) Where the inventory of sites pursuant to paragraph (7) of
18 subdivision (a) does not identify adequate sites to accommodate
19 the need for emergency shelters and residential service facilities
20 identified pursuant to paragraph (6) of subdivision (a), the
21 program shall identify actions that will be taken to make
22 available adequate sites that can be developed within the
23 planning period to meet the need for emergency shelters and
24 residential service facilities. The sites shall be zoned to permit
25 the development of shelters or residential service facilities as a
26 use by right, as defined in subdivision (i) of Section 65583.2, and
27 shall be zoned with appropriate development standards and
28 served with appropriate infrastructure to accommodate the
29 community's need for emergency shelter and residential service
30 facilities.

31 (2) Assist in the development of adequate housing to meet the
32 needs of low- and moderate-income households.

33 (3) Address and, where appropriate and legally possible,
34 remove governmental constraints to the maintenance,
35 improvement, and development of housing, including housing for
36 all income levels and housing for persons with disabilities. The
37 program shall remove constraints to, or provide reasonable
38 accommodations for housing designed for, intended for
39 occupancy by, or with supportive services for, persons with
40 disabilities.

1 (4) Conserve and improve the condition of the existing
2 affordable housing stock, which may include addressing ways to
3 mitigate the loss of dwelling units demolished by public or
4 private action.

5 (5) Promote housing opportunities for all persons regardless of
6 race, religion, sex, marital status, ancestry, national origin, color,
7 familial status, or disability.

8 (6) (A) Preserve for lower income households the assisted
9 housing developments identified pursuant to paragraph (9) of
10 subdivision (a). The program for preservation of the assisted
11 housing developments shall utilize, to the extent necessary, all
12 available federal, state, and local financing and subsidy programs
13 identified in paragraph (8) of subdivision (a), except where a
14 community has other urgent needs for which alternative funding
15 sources are not available. The program may include strategies
16 that involve local regulation and technical assistance.

17 (B) The program shall include an identification of the agencies
18 and officials responsible for the implementation of the various
19 actions and the means by which consistency will be achieved
20 with other general plan elements and community goals. The local
21 government shall make a diligent effort to achieve public
22 participation of all economic segments of the community in the
23 development of the housing element, and the program shall
24 describe this effort.

25 (d) A local government may satisfy the requirements to
26 identify sites suitable for the development of emergency shelters
27 and residential service facilities pursuant to paragraph (7) of
28 subdivision (a) and to include a program to identify sufficient
29 sites for these facilities pursuant to subparagraph (C) of
30 paragraph (1) of subdivision (c) by adopting and implementing a
31 multijurisdictional agreement with adjacent communities that
32 commits the participating jurisdictions to identify sufficient sites
33 suitable for development within the planning period of
34 emergency shelters and residential services facilities that are
35 zoned to permit the development of these shelters and facilities
36 as a use by right, as defined in subdivision (i) of Section 65583.2.
37 The sites shall be zoned with appropriate development standards
38 and served with appropriate infrastructure to accommodate the
39 combined need for emergency shelters and residential service

1 facilities of all the participating jurisdictions, as identified by
2 each jurisdiction pursuant to paragraph (6) of subdivision (a).

3 *(e) On and after January 1, 2007, the adoption or amendment*
4 *of the housing element by a city, county, or city and county*
5 *pursuant to this chapter shall incorporate the changes to the*
6 *housing element required by this section.*

7 SEC. 4. Section 65583.2 of the Government Code is amended
8 to read:

9 65583.2. (a) A city's or county's inventory of land suitable
10 for residential development pursuant to paragraph (3) of
11 subdivision (a) of Section 65583 shall be used to identify sites
12 that can be developed for housing within the planning period and
13 that are sufficient to provide for the jurisdiction's share of the
14 regional housing need for all income levels pursuant to Section
15 65584. As used in this section, "land suitable for residential
16 development" includes all of the following:

17 (1) Vacant sites zoned for residential use.

18 (2) Vacant sites zoned for nonresidential use that allows
19 residential development.

20 (3) Residentially zoned sites that are capable of being
21 developed at a higher density.

22 (4) Sites zoned for nonresidential use that can be redeveloped
23 for, and as necessary, rezoned for, residential use.

24 (b) The inventory of land shall include all of the following:

25 (1) A listing of properties by parcel number or other unique
26 reference.

27 (2) The size of each property listed pursuant to paragraph (1),
28 and the general plan designation and zoning of each property.

29 (3) For nonvacant sites, a description of the existing use of
30 each property.

31 (4) A general description of any environmental constraints to
32 the development of housing within the jurisdiction, the
33 documentation for which has been made available to the
34 jurisdiction. This information need not be identified on a
35 site-specific basis.

36 (5) A general description of existing or planned water, sewer,
37 and other dry utilities supply, including the availability and
38 access to distribution facilities. This information need not be
39 identified on a site-specific basis.

1 (6) Sites identified as available for housing for
2 above-moderate income households in areas not served by public
3 sewer systems. This information need not be identified on a
4 site-specific basis.

5 (7) A map that shows the location of the sites included in the
6 inventory, such as the land use map from the jurisdiction's
7 general plan for reference purposes only.

8 (c) Based on the information provided in subdivision (b), a
9 city or county shall determine whether each site in the inventory
10 can accommodate some portion of its share of the regional
11 housing need by income level during the planning period, as
12 determined pursuant to Section 65584. The analysis shall
13 determine whether the inventory can provide for a variety of
14 types of housing, including multifamily rental housing,
15 factory-built housing, mobilehomes, housing for agricultural
16 employees, emergency shelters, residential service facilities, and
17 transitional housing. The city or county shall determine the
18 number of housing units that can be accommodated on each site
19 as follows:

20 (1) If local law or regulations require the development of a site
21 at a minimum density, the department shall accept the planning
22 agency's calculation of the total housing unit capacity on that site
23 based on the established minimum density. If the city or county
24 does not adopt a law or regulations requiring the development of
25 a site at a minimum density, then it shall demonstrate how the
26 number of units determined for that site pursuant to this
27 subdivision will be accommodated.

28 (2) The number of units calculated pursuant to paragraph (1)
29 shall be adjusted as necessary, based on the land use controls and
30 site improvements requirement identified in paragraph (4) of
31 subdivision (a) of Section 65583.

32 (3) For the number of units calculated to accommodate its
33 share of the regional housing need for lower income households
34 pursuant to paragraph (2), a city or county shall do either of the
35 following:

36 (A) Provide an analysis demonstrating how the adopted
37 densities accommodate this need. The analysis shall include, but
38 is not limited to, factors such as market demand, financial
39 feasibility, or information based on development project

1 experience within a zone or zones that provide housing for lower
2 income households.

3 (B) The following densities shall be deemed appropriate to
4 accommodate housing for lower income households:

5 (i) For incorporated cities within nonmetropolitan counties and
6 for nonmetropolitan counties that have micropolitan areas: sites
7 allowing at least 15 units per acre.

8 (ii) For unincorporated areas in all nonmetropolitan counties
9 not included in clause (i): sites allowing at least 10 units per acre.

10 (iii) For suburban jurisdictions: sites allowing at least 20 units
11 per acre.

12 (iv) For jurisdictions in metropolitan counties: sites allowing
13 at least 30 units per acre.

14 (d) For purposes of this section, metropolitan counties,
15 nonmetropolitan counties, and nonmetropolitan counties with
16 micropolitan areas are as determined by the United States Census
17 Bureau. Nonmetropolitan counties with micropolitan areas
18 include the following counties: Del Norte, Humboldt, Lake
19 Mendocino, Nevada, Tehama, and Tuolumne and such other
20 counties as may be determined by the United States Census
21 Bureau to be nonmetropolitan counties with micropolitan areas in
22 the future.

23 (e) A jurisdiction is considered suburban if the jurisdiction
24 does not meet the requirements of clauses (i) and (ii) of
25 subparagraph (B) of paragraph (3) of subdivision (c) and is
26 located in a Metropolitan Statistical Area (MSA) of less than
27 2,000,000 in population, unless that jurisdiction's population is
28 greater than 100,000, in which case it is considered metropolitan.
29 Counties, not including the City and County of San Francisco,
30 will be considered suburban unless they are in a MSA of
31 2,000,000 or greater in population in which case they are
32 considered metropolitan.

33 (f) A jurisdiction is considered metropolitan if the jurisdiction
34 does not meet the requirements for "suburban area" above and is
35 located in a MSA of 2,000,000 or greater in population, unless
36 that jurisdiction's population is less than 25,000 in which case it
37 is considered suburban.

38 (g) For sites described in paragraph (3) of subdivision (b) the
39 city or county shall specify the additional development potential
40 for each site within the planning period and shall provide an

1 explanation of the methodology used to determine the
2 development potential. The methodology shall consider factors
3 including the extent to which existing uses may constitute an
4 impediment to additional residential development, development
5 trends, market conditions, and regulatory or other incentives or
6 standards to encourage additional residential development on
7 these sites.

8 (h) The program required by subparagraph (A) of paragraph
9 (1) of subdivision (c) of Section 65583 shall accommodate 100
10 percent of the need for housing for very low and low-income
11 households allocated pursuant to Section 65584 for which site
12 capacity has not been identified in the inventory of sites pursuant
13 to paragraph (3) of subdivision (a) on sites that shall be zoned to
14 permit owner-occupied and rental multifamily residential use by
15 right during the planning period. These sites shall be zoned with
16 minimum density and development standards that permit at least
17 16 units per site at a density of at least 16 units per acre in
18 jurisdictions described in clause (i) of subparagraph (B) of
19 paragraph (3) of subdivision (c) and at least 20 units per acre in
20 jurisdictions described in clauses (iii) and (iv) of subparagraph
21 (B) of paragraph (3) of subdivision (c). At least 50 percent of the
22 very low and low-income housing need shall be accommodated
23 on sites designated for residential use and for which
24 nonresidential uses or mixed-uses are not permitted.

25 (i) For purposes of this section and Section 65583, the phrase
26 “use by right” shall mean that the local government’s review of
27 the use for an emergency shelter, a residential service facility, or
28 an owner-occupied or rental multifamily residential development
29 may not require a conditional use permit, planned unit
30 development permit, or other discretionary local government
31 review or approval that would constitute a “project” for purposes
32 of Division 13 (commencing with Section 21100) of the Public
33 Resources Code. Any subdivision of the sites shall be subject to
34 all laws, including, but not limited to, the local government
35 ordinance implementing the Subdivision Map Act. A local
36 ordinance may provide that “use by right” does not exempt the
37 use from design review. However, that design review shall not
38 constitute a “project” for purposes of Division 13 (commencing
39 with Section 21100) of the Public Resources Code. Use by right

1 for all rental multifamily residential housing shall be provided in
2 accordance with subdivision (f) of Section 65589.5.

3 SEC. 5. Section 65589.5 of the Government Code is amended
4 to read:

5 65589.5. (a) The Legislature finds and declares all of the
6 following:

7 (1) The lack of housing and emergency shelters is a critical
8 problem that threatens the economic, environmental, and social
9 quality of life in California.

10 (2) California housing has become the most expensive in the
11 nation. The excessive cost of the state's housing supply is
12 partially caused by activities and policies of many local
13 governments that limit the approval of housing, increase the cost
14 of land for housing, and require that high fees and exactions be
15 paid by producers of housing.

16 (3) Among the consequences of those actions are
17 discrimination against low-income and minority households, lack
18 of housing to support employment growth, imbalance in jobs and
19 housing, reduced mobility, urban sprawl, excessive commuting,
20 and air quality deterioration.

21 (4) Many local governments do not give adequate attention to
22 the economic, environmental, and social costs of decisions that
23 result in disapproval of housing projects and emergency shelters,
24 reduction in density of housing projects, and excessive standards
25 for housing projects.

26 (b) It is the policy of the state that a local government not
27 reject or make infeasible emergency shelters and housing
28 developments that contribute to meeting the housing need
29 determined pursuant to this article without a thorough analysis of
30 the economic, social, and environmental effects of the action and
31 without complying with subdivision (d).

32 (c) The Legislature also recognizes that premature and
33 unnecessary development of agricultural lands for urban uses
34 continues to have adverse effects on the availability of those
35 lands for food and fiber production and on the economy of the
36 state. Furthermore, it is the policy of the state that development
37 should be guided away from prime agricultural lands; therefore,
38 in implementing this section, local jurisdictions should
39 encourage, to the maximum extent practicable, in filling existing
40 urban areas.

(d) A local agency shall not disapprove an emergency shelter or a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of transitional housing or an emergency shelter, the jurisdiction shall have met or exceeded the need for transitional housing or emergency shelter, as identified pursuant to paragraph (6) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a

1 “specific, adverse impact” means a significant, quantifiable,
2 direct, and unavoidable impact, based on objective, identified
3 written public health or safety standards, policies, or conditions
4 as they existed on the date the application was deemed complete.
5 Inconsistency with the zoning ordinance or general plan land use
6 designation shall not constitute a specific, adverse impact upon
7 the public health or safety.

8 (3) The denial of the project or imposition of conditions is
9 required in order to comply with specific state or federal law, and
10 there is no feasible method to comply without rendering the
11 development unaffordable to low- and moderate-income
12 households or rendering the development of the emergency
13 shelter financially infeasible.

14 (4) The development project or emergency shelter is proposed
15 on land zoned for agriculture or resource preservation that is
16 surrounded on at least two sides by land being used for
17 agricultural or resource preservation purposes, or which does not
18 have adequate water or wastewater facilities to serve the project.

19 (5) The development project or emergency shelter is
20 inconsistent with both the jurisdiction’s zoning ordinance and
21 general plan land use designation as specified in any element of
22 the general plan as it existed on the date the application was
23 deemed complete, and the jurisdiction has adopted a revised
24 housing element in accordance with Section 65588 that is in
25 substantial compliance with this article.

26 (A) This paragraph cannot be utilized to disapprove or
27 conditionally approve a housing development project if the
28 development project is proposed on a site that is identified as
29 suitable or available for very low, low-, or moderate-income
30 households in the jurisdiction’s housing element, and consistent
31 with the density specified in the housing element, even though it
32 is inconsistent with both the jurisdiction’s zoning ordinance and
33 general plan land use designation. This paragraph cannot be
34 utilized to disapprove or conditionally approve an emergency
35 shelter if the shelter is proposed on a site that is identified as
36 suitable for emergency shelters in the housing element, even
37 though it is inconsistent with both the jurisdiction’s zoning
38 ordinance and general plan land use designation.

39 (B) If the local agency has failed, in accordance with Section
40 65583.2, to identify in the inventory of land in its housing

1 element sites that can be developed for housing within the
2 planning period and that are sufficient to provide for the
3 jurisdiction's share of the regional housing need for all income
4 levels pursuant to Section 65584, then this paragraph shall not be
5 utilized to disapprove or conditionally approve a housing
6 development project proposed for a site designated in any
7 element of the general plan for residential uses or designated in
8 any element of the general plan for commercial uses if residential
9 uses are permitted or conditionally permitted within commercial
10 designations. In any action in court, the burden of proof shall be
11 on the local agency to show that its housing element does
12 identify adequate sites with appropriate zoning and development
13 standards and with services and facilities to accommodate the
14 local agency's share of the regional housing need for the very
15 low and low-income categories.

16 (e) Nothing in this section shall be construed to relieve the
17 local agency from complying with the Congestion Management
18 Program required by Chapter 2.6 (commencing with Section
19 65088) of Division 1 of Title 7 or the California Coastal Act
20 (Division 20 (commencing with Section 30000) of the Public
21 Resources Code). Neither shall anything in this section be
22 construed to relieve the local agency from making one or more of
23 the findings required pursuant to Section 21081 of the Public
24 Resources Code or otherwise complying with the California
25 Environmental Quality Act (Division 13 (commencing with
26 Section 21000) of the Public Resources Code).

27 (f) Nothing in this section shall be construed to prohibit a local
28 agency from requiring the development project or emergency
29 shelter to comply with objective, quantifiable, written
30 development standards, conditions, and policies appropriate to,
31 and consistent with, meeting the jurisdiction's share of the
32 regional housing need pursuant to Section 65584. However, the
33 development standards, conditions, and policies shall be applied
34 to facilitate and accommodate development at the density
35 permitted on the site and proposed by the development project.
36 Nothing in this section shall be construed to prohibit a local
37 agency from imposing fees and other exactions otherwise
38 authorized by law that are essential to provide necessary public
39 services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Housing development project” means a use consisting of either of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, “neighborhood commercial” means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) “Housing for very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the

1 Health and Safety Code. The developer shall provide sufficient
2 legal commitments to ensure continued availability of units for
3 very low or low-income households in accordance with the
4 provisions of this subdivision for 30 years.

5 (5) “Neighborhood” means a planning area commonly
6 identified in a community’s planning documents, and identified
7 as a neighborhood by the individuals residing and working within
8 the neighborhood. Documentation demonstrating that the area
9 meets the definition of neighborhood may include a map
10 prepared for planning purposes which lists the name and
11 boundaries of the neighborhood.

12 (6) “Disapprove the development project” includes any
13 instance in which a local agency does either of the following:

14 (A) Votes on a proposed housing development project
15 application and the application is disapproved.

16 (B) Fails to comply with the time periods specified in
17 subparagraph (B) of paragraph (1) of subdivision (a) of Section
18 65950. An extension of time pursuant to Article 5 (commencing
19 with Section 65950) shall be deemed to be an extension of time
20 pursuant to this paragraph.

21 (i) If any city, county, or city and county denies approval or
22 imposes restrictions, including design changes, a reduction of
23 allowable densities or the percentage of a lot that may be
24 occupied by a building or structure under the applicable planning
25 and zoning in force at the time the application is deemed
26 complete pursuant to Section 65943, that have a substantial
27 adverse effect on the viability or affordability of a housing
28 development for very low, low-, or moderate-income households,
29 and the denial of the development or the imposition of
30 restrictions on the development is the subject of a court action
31 which challenges the denial, then the burden of proof shall be on
32 the local legislative body to show that its decision is consistent
33 with the findings as described in subdivision (d) and that the
34 findings are supported by substantial evidence in the record.

35 (j) When a proposed housing development project complies
36 with applicable, objective general plan and zoning standards and
37 criteria, including design review standards, in effect at the time
38 that the housing development project’s application is determined
39 to be complete, but the local agency proposes to disapprove the
40 project or to approve it upon the condition that the project be

1 developed at a lower density, the local agency shall base its
2 decision regarding the proposed housing development project
3 upon written findings supported by substantial evidence on the
4 record that both of the following conditions exist:

5 (1) The housing development project would have a specific,
6 adverse impact upon the public health or safety unless the project
7 is disapproved or approved upon the condition that the project be
8 developed at a lower density. As used in this paragraph, a
9 “specific, adverse impact” means a significant, quantifiable,
10 direct, and unavoidable impact, based on objective, identified
11 written public health or safety standards, policies, or conditions
12 as they existed on the date the application was deemed complete.

13 (2) There is no feasible method to satisfactorily mitigate or
14 avoid the adverse impact identified pursuant to paragraph (1),
15 other than the disapproval of the housing development project or
16 the approval of the project upon the condition that it be
17 developed at a lower density.

18 (k) The applicant or any person who would be eligible to
19 apply for residency in the development or emergency shelter may
20 bring an action to enforce this section. If in any action brought to
21 enforce the provisions of this section, a court finds that the local
22 agency disapproved a project or conditioned its approval in a
23 manner rendering it infeasible for the development of housing or
24 emergency shelter for very low, low-, or moderate-income
25 households, including farmworker housing, without making the
26 findings required by this section or without making sufficient
27 findings supported by substantial evidence, the court shall issue
28 an order or judgment compelling compliance with this section
29 within 60 days, including, but not limited to, an order that the
30 local agency take action on the development project or
31 emergency shelter. The court shall retain jurisdiction to ensure
32 that its order or judgment is carried out and shall award
33 reasonable attorney’s fees and costs of suit to the plaintiff or
34 petitioner who proposed the housing development or emergency
35 shelter, except under extraordinary circumstances in which the
36 court finds that awarding fees would not further the purposes of
37 this section. If the court determines that its order or judgment has
38 not been carried out within 60 days, the court may issue further
39 orders as provided by law to ensure that the purposes and policies
40 of this section are fulfilled, including, but not limited to, an order

1 to vacate the decision of the local agency, in which case the
2 application for the project, as constituted at the time the local
3 agency took the initial action determined to be in violation of this
4 section, along with any standard conditions determined by the
5 court to be generally imposed by the local agency on similar
6 projects, shall be deemed approved unless the applicant consents
7 to a different decision or action by the local agency.

8 (l) If the court finds that the local agency (1) acted in bad faith
9 when it disapproved or conditionally approved the housing
10 development or emergency shelter in violation of this section and
11 (2) failed to carry out the court's order or judgment within 60
12 days as described in paragraph (k), the court in addition to any
13 other remedies provided by this section, may impose fines upon
14 the local agency that the local agency shall be required to deposit
15 into a housing trust fund. Fines shall not be paid from funds that
16 are already dedicated for affordable housing, including, but not
17 limited to, redevelopment or low- and moderate-income housing
18 funds and federal HOME and CDBG funds. The local agency
19 shall commit the money in the trust fund within five years for the
20 sole purpose of financing newly constructed housing units
21 affordable to extremely low, very low, or low-income
22 households. For purposes of this section, "bad faith" shall mean
23 an action that is frivolous or otherwise entirely without merit.

24 (m) Any action brought to enforce the provisions of this
25 section shall be brought pursuant to Section 1094.5 of the Code
26 of Civil Procedure, and the local agency shall prepare and certify
27 the record of proceedings in accordance with subdivision (c) of
28 Section 1094.6 of the Code of Civil Procedure no later than 30
29 days after the petition is served, provided that the cost of
30 preparation of the record shall be borne by the local agency.
31 Upon entry of the trial court's order, a party shall, in order to
32 obtain appellate review of the order, file a petition within 20 days
33 after service upon it of a written notice of the entry of the order,
34 or within such further time not exceeding an additional 20 days
35 as the trial court may for good cause allow. If the local agency
36 appeals the judgment of the trial court, the local agency shall post
37 a bond, in an amount to be determined by the court, to the benefit
38 of the plaintiff if the plaintiff is the project applicant.

39 (n) In any action, the record of the proceedings before the
40 local agency shall be filed as expeditiously as possible and,

1 notwithstanding Section 1094.6 of the Code of Civil Procedure
2 or subdivision (m) of this section, all or part of the record may be
3 prepared (1) by the petitioner with the petition or petitioner's
4 points and authorities, (2) by the respondent with respondent's
5 points and authorities, (3) after payment of costs by the
6 petitioner, or (4) as otherwise directed by the court. If the
7 expense of preparing the record has been borne by the petitioner
8 and the petitioner is the prevailing party, the expense shall be
9 taxable as costs.

10 SEC. 6. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.